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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				UBER, NATHAN C		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/706,952	GREENBERG ET AL.
	Examiner	Art Unit
	NATHAN C. UBER	3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 27 August 2009.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3,6-11,13-18,21-26,28-33,36-41 and 43-45 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3, 6-11, 13-18, 21-26, 28-33, 36-41 and 43-45 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION**Status of Claims**

1. This action is in reply to the amendment filed on 27 August 2009.
2. Claims 1, 16-18, 22-26, 28 and 31 have been amended.
3. Claims 1-3, 6-11, 13-18, 21-26, 28-33, 36-41 and 43-45 are currently pending and have been examined.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 16 and 31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant amended the independent claims to newly recite *after the enterprise determines that the relationship is advantageous to the enterprise, wherein the plurality of persons are associated with a higher response rate to a soliciting offer presented by the financial institution that persons not related to the enterprise*, however Applicant does not indicate where in the original disclosure these new limitations are supported. After further examination, Examiner can neither find an additional determination step by the enterprise described in the figures or in the specification, nor any discussion of a *response rate* or associations based on a *response rate*. Accordingly, the newly added limitations are considered impermissible new matter.

Claim Rejections - 35 USC § 101

6. The previous 101 rejections are withdrawn.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-3, 6-11, 13-18, 21-26, 28-33, 36-41 and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marshall (U.S. 2002/0116266) in view of Walker et al. (6,018,718) and in view of COSTCO.

Claims 1, 16 and 31

Marshall, as shown, discloses the following limitations:

- *identifying an enterprise unrelated to the financial institution* (see at least ¶0033, the incentive rewards program is maintained by a program administrator and multiple participant organizations engage interactions with individuals; the administrator is the financial institution, a participant organization is the enterprise),

- *arranging, by the financial institution, a relationship with the enterprise to reward a person for engaging in the non-credit behavior benefiting the enterprise* (see at least ¶0033, the incentive rewards program is maintained by a program administrator and multiple participant organizations engage interactions with individuals; inherently in order for the Marshall invention in which an administrator administers a rewards program for participating organizations to operate, the administrator and the participating organizations must have arranged a relationship; further see at least ¶0031, "...individuals accumulate time points by engaging in activities specified by the programs" and ¶0035, "...such activities may include... attending in person or remotely sales presentation, providing blood donations... engaging in volunteer activities, or a range of other activity which may be desired," the participant organizations are facilitating the interactions with the individuals and the administrator is providing the rewards for the behavior),
- *receiving, from the enterprise and by the computing system, contact information identifying a plurality of persons involved with the enterprise after the enterprise determines that the relationship is advantageous to the enterprise, wherein the plurality of persons are associated with a higher response rate to a soliciting offer presented by the financial institution than persons not related to the enterprise* (see at least ¶0080, enrolling individuals may include receiving individual contact/profile information from a third party; the third party being some party with a customer database other than the individual, i.e. a participating company/enterprise; it would have been obvious to one having ordinary skill in the art at the time of the invention that a determination that the data in the third party database and/or the partnership between the two companies will be *advantageous* would have been made since it is obvious in the business arts to seek beneficial

partnerships to enhance the business/improve revenue streams rather than seek partnerships determined to be detrimental to the business),

- *soliciting, by a financial institution, based upon the contact information and by the computing system, the plurality of persons involved with the enterprise to associate a financial account with a reward for engaging in the non-credit behavior benefiting the enterprise, wherein soliciting further includes notifying the plurality of persons of the relationship between the financial institute and the enterprise* (see at least ¶0113, “[i]f the program determines that the individual is not an existing enrolled member, the individual is offered the option of enrolling in the program...”; the specific content of an offer constitutes non-functional descriptive material and does not carry patentable weight in the claim),
- *associating the financial account of a person with the reward for engaging in non-credit behavior based upon a response from the person to the soliciting* (see at least ¶0031, an account associated with an individual that accumulates time points/rewards in exchange for the individual’s participation in a wide variety of activities),
- *detecting non-credit behavior of the person, the detected non-credit behavior benefiting the enterprise* (see at least ¶0031, “...individuals accumulate time points by engaging in activities specified by the programs” and ¶0035, “...such activities may include... attending in person or remotely sales presentation, providing blood donations... engaging in volunteer activities, or a range of other activity which may be desired”),
- *notifying the person of the determined reward* (see at least ¶0077, the individuals can access their account balances so see the rewards points they accumulated),

Marshall discloses than any organization may be the administrator (¶0033). However, Marshall does not specifically disclose *financial institution* or *financial accounts* or limitations particular to financial accounts. Walker, as shown, discloses a method and system in which personalized incentives are offered by a financial institution (see at least column 4, lines 18-20) to a holder of a financial account (see at least column 4, lines 18-20). Further Walker discloses the following limitation:

- *wherein a lower credit risk is associated with persons who engage in non-credit behavior benefiting the enterprise* (see at least column 7, lines 55-57, credit scores takes into account factors such as years at current job; here the enterprise is the employer of the account holder and the non-credit behavior that the account holder engages in is doing his/her job),

Walker does not specifically disclose rewarding the credit card account simply by virtue of a lower credit risk or based on an account holder's continued employment. However COSTCO, as shown, discloses a credit card company awarding account holders a reduction in annual fees on their credit card account in exchange for account holder maintaining a COSTCO membership, which benefits COSTCO (see at least COSTCO, ¶1). COSTCO further discloses:

- *after the enterprise determines that the relationship is advantageous to the enterprise, wherein the plurality of persons are associated with a higher response rate to a soliciting offer presented by the financial institution than persons not related to the enterprise* (see at least ¶¶14-16, benefits determined by COSTCO for the relationship with AmEx and targeting a particular demographic that will be attracted to COSTCO by American Express, increased ability to sell higher-end products using credit, boosting small business customer demographic, faster and simpler credit transactions make the partnership less of a processing burden to COSTCO than it might have been before),

- *wherein soliciting further includes notifying the plurality of persons of the relationship between the financial institute and the enterprise (see at least ¶6, co-branded COSTCO/AmEx credit cards),*

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the teachings of Walker and COSTCO, which teach financial institutions rewarding those financial accounts of individuals that behave in beneficial ways, with Marshall's teaching of operating a loyalty program that rewards individual account holders of the loyalty program for beneficial interactions between the individuals and other enterprises since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claim 2, 17 and 32:

The combination Marshall/Walker/COSTCO discloses the limitations as shown in the rejections above. Marshall further discloses evaluating the account balance of a customer to determine eligibility for a reward (see at least ¶0097). Marshall does not specifically disclose the following limitation. However, Walker, as shown, discloses the following limitation:

- *evaluating a credit risk of the financial account based upon a frequency at which the non-credit behavior is detected (see at least column 7, lines 34-36, scores are "currently" used to determine the credit risk of a customer),*

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teachings disclosed by Walker to be generally known in the art (i.e. evaluating the credit risk of customers based on non-credit behavior such as replying to advertisements) to obtain information about a customer with Marshall's teaching of operating a loyalty program that rewards individual account holders of the loyalty program for beneficial interactions between the individuals and other enterprises since the claimed

invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Claim 3, 18 and 33:

The combination Marshall/Walker/COSTCO discloses the limitations as shown in the rejections above. Further, Marshall, as shown, discloses the following limitations:

- *if the frequency at which the non-credit behavior is detected attains a certain threshold, providing for the financial account at least one of (see at least ¶0095, “threshold levels create tangible reward thresholds that individuals can strive to reach in order to become entitled to select a specific reward offered...”),*
- *a waiver of an annual fee, a credit redeemable for products, and a credit redeemable for services (see at least ¶0015, discounted services, and ¶0031, “time points may be redeemed for products and/or services...”),*

Marshall does not specifically disclose the following limitations. However, Walker, as shown, discloses the following limitations:

- *an interest rate lower than an interest rate of the financial account prior to the evaluation, a credit limit higher than a credit limit of the financial account prior to the evaluation, a monetary credit (see at least column 9, Table II),*

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the rewards of Walker with the rewards of Marshall because Marshall teaches providing meaningful incentives to customers.

Claim 6, 21 and 36:

The combination Marshall/Walker/COSTCO discloses the limitations as shown in the rejections above. Further, Marshall, as shown, discloses the following limitation:

- *the determined reward for the financial account at least one of a waiver of an annual fee, a credit redeemable for products, and a credit redeemable for*

services (see at least ¶0015, discounted services, and ¶0031, “time points may be redeemed for products and/or services...”),

Marshall does not specifically disclose the following limitations, however, Walker, as shown, does:

- *an interest rate lower than the interest rate prior to the evaluation, a credit limit higher than the credit limit prior to the evaluation, a monetary credit* (see at least column 9, Table II),

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the rewards of Walker with the rewards of Marshall because Marshall teaches providing meaningful incentives to customers.

Claim 7, 22 and 37:

The combination Marshall/Walker discloses the limitations in the rejections above.

Further Marshall, as shown, discloses the following limitations:

- *associating the financial account with the enterprise if the customer is currently a customer of an institution controlling the financial account based upon the contact information* (see at least ¶0113, “[t]he information is received by the system and evaluated by the software program to determine whether the individual is an existing enrolled member”),

Claim 8, 23 and 38:

The combination Marshall/Walker/COSTCO discloses the limitations as shown in the rejections above. Marshall, as shown, further discloses the following limitation:

- *receiving a voucher subsequent to a performance of the non-credit behavior* (see at least Figure 5, Items 600 and 635, participant system records individual accumulation session values and sends them to the program administrator).

Claim 9, 24 and 39:

The combination Marshall/Walker/COSTCO discloses the limitations as shown in the rejections above. Marshall, as shown, further discloses the following limitation:

- *receiving the voucher from the enterprise* (see at least Figure 5, Items 600 and 635, participant system records individual accumulation session values and sends them to the program administrator).

Claim 10, 25 and 40:

The combination Marshall/Walker/COSTCO discloses the limitations as shown in the rejections above. Marshall, as shown, further discloses methods and a system equivalent to the limitation below:

- *receiving the voucher from the person* (see at least ¶0075, explaining (with reference to Item 180 of Figure 1) how customers that are not previously enrolled are presented with a unique code that identifies their participation in a credit-worthy activity, the customer then provides this code to the program administrator during enrollment to obtain the credit earned, see also Figure 11, particularly Item 1340, in which individuals initiate accumulation sessions/activities on their own by accessing the system, see also ¶0072, describing a checkpoint system that individuals activate to alert the system of their presence/behavior).

Claim 11, 26 and 41:

The combination Marshall/Walker/COSTCO discloses the limitations as shown in the rejections above. Marshall, as shown, further discloses methods and a system equivalent to the limitation below:

- *receiving an electronic file subsequent to a performance of the non-credit behavior* (see at least Figure 5, Items 600 and 635, participant system records individual accumulation session values and sends them to the program administrator),

- *the electronic file comprising a description of the non-credit behavior and an identification of the person, the identification of the person obtained by reading an indicia presented by the person* (see at least ¶0074, individuals provide identification information to the participant electronically, and it is recorded by the system and stored along with a record of the task completed and any previously completed and recorded tasks, see also ¶0054 “the system may issue the individual a unique alphanumeric identification code...”).

Claim 13, 28 and 43:

The combination Marshall/Walker/COSTCO discloses the limitations as shown in the rejections above. Further, Marshall, as shown, discloses the following limitation:

- *using at least one of e-mail, voice mail, facsimile, mail, an item delivery service, Internet, telephone, diskettes, CD ROM, and an interactive voice response system (IVR)* (see at least ¶0060, telephone interactions and internet interactions).

Claim 14, 29 and 44:

The combination Marshall/Walker/COSTCO discloses the limitations as shown in the rejections above. Marshall does not specifically disclose the following limitation. However, Walker, as shown, discloses the following limitation:

- *the financial account comprises at least one of a credit card account, a financial loan, a checking account, a savings account, and a stock fund* (see at least column 3, line 17, the preferred embodiment of this invention is a credit card account),

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the financial account reward method of Walker with the reward system of Marshall because Marshall suggests that service providers such as credit card companies and utilities could benefit from desirable behaviors such as early account

payments (see ¶005) and Walker enables a method for applying such rewards program to such accounts.

Claim 15, 30 and 45:

The combination Marshall/Walker/COSTCO discloses the limitations as shown in the rejections above. Further, Marshall, as shown, discloses the following limitation:

- *the enterprise comprises at least one of a charity, a religious organization, a civic club, a professional organization, a school, a university, a sports organization, a political organization, a government agency, a private corporation, and a public corporation* (see at least ¶0035, describing various examples of participants including blood donor organizations, utility providers, and other service providers like prepaid phone providers).

Response to Arguments

10. Applicant's arguments filed 27 August 2009 have been fully considered but they are not persuasive.
11. Applicant first argues that the current rejection fails to address the limitation of the independent claims "wherein a lower credit risk is associated with persons who engage in non-credit behavior benefiting the enterprise." This wherein clause is appended to the step of "identifying an enterprise unrelated to the financial institution." Examiner does not interpret the wherein clause to mean that a step of "associating" occurs or is being performed as part of the method as Applicant implies in Applicants remarks on page 16. Examiner assumes that if such a step were critical to the method, Applicant would positively recite the step in the method and provide an enabling disclosure for this step in the specification. Further this "associating" limitation occurs at a step in the method where the financial institution does not have access to the "people" associated with the enterprise, as the step of accepting contact information does not occur until after the enterprise is identified, after a relationship is arranged and after the enterprise sends the financial institution its contact information. So, Examiner interprets this wherein clause not as a positive

step, but rather as an intuitive step that the financial institution is making as it evaluates/identifies potential enterprises. Applicant's arguments have not impacted Examiner's interpretation of this limitation, in fact Applicant's amendments support Examiner's interpretation as then specifically indicate that information about the "people" is not provided to the financial institution until the enterprise determines that the relationship will be advantageous. Accordingly Applicant's arguments against the reference COSTCO are not persuasive because Applicant assumes a different interpretation of the claim language, one which Examiner does not believe is supported by the claim itself or by the disclosure. Further Examiner is required to take the broadest reasonable interpretation of the claim language in light of the specification, and Applicant should seek to narrow the claims such that the claims accurately and precisely define Applicant's invention, thus preventing an interpretation with which Applicant disagrees. Examiner maintains the COSTCO reference because it demonstrates a financial institution, AmEx, seeking relationship with COSTCO, an enterprise. And COSTCO has the unique characteristics claimed, i.e. it has a base of customers that since the 1980s (see ¶16) have patronized COSTCO stores with cash and checks only as well as maintained membership fees; all non-credit behaviors that benefited COSTCO. Naturally AmEX seeks a relationship with COSTCO to gain access to such customers because, although AmEX does not know who they are, AmEx at least knows that they are accustomed to shopping within their means (i.e. with cash) and AmEx knows that they are shoppers (i.e. they actually shop and spend money at COSTCO). Examiner believes that it would have been obvious for AmEx to intuit that such customers are lower risk, especially under a broad interpretation of "lower credit risk;" any customer that you know something about is a lower risk customer than one you know nothing about. This rejection is maintained.

12. Next Applicant argues that the newly added limitations are not disclosed by the Marshall reference. With respect to the first limitation, *after the enterprise determines that the relationship is advantageous to the enterprise, wherein the plurality of persons are associated with a higher response rate to a soliciting offer presented by the financial institution than persons not related to the enterprise* Examiner notes that this limitation is impermissible new matter, see the rejection

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above. Applicant argues that the participant organization of Marshall makes no determination about whether the relationship is advantageous (see page 17 of Applicant's remarks). Examiner notes, that Applicant's specification makes no such determination, rather Applicant's specification only determines whether there is an acceptance. Further Examiner believes that the newly claimed determination is obvious to the Marshall teaching since it is generally obvious to one of ordinary skill in the business arts to seek *advantageous* business partnerships/arrangements as opposed to detrimental ones. Examiner believes that one of ordinary skill in the art at the time of the invention would recognize that third party arrangements noted in Marshall would at least be determined to be advantageous, especially since Marshall discloses that additional processing steps necessary in order to assimilate third party data into the Marshall system. Why bother taking extra steps if the result is not believed to be advantageous? Further Applicant broadly alleges that neither Walker nor COSTCO cure the perceived deficiencies of Marshall, Examiner disagrees. As noted above, COSTCO discloses in at least ¶¶14-16, several expected benefits determined by COSTCO to arise from the relationship with AmEx including: targeting a particular demographic that will be attracted to COSTCO by American Express, increased ability to sell higher-end products using credit, boosting small business customer demographic, faster and simpler credit transactions make the partnership less of a processing burden to COSTCO than it might have been before. COSTCO further discloses that among those benefits may be increased patronage from people who tend to use AmEx cards, increased patronage from small businesses and more high-price purchases. Accordingly, Examiner maintains the prior art references with respect to this new limitation.

13. With respect to the second newly added limitation, Applicant argues that Marshall/Walker/COSTCO does not teach that the offer to enroll individuals includes a notification of the relationship between the financial institute and the enterprise. As noted in the rejection above, the specific content of an offer or message is considered non-functional descriptive material and does not affect the scope of the claim. Further COSTCO specifically discloses offering co-branded COSTCO/AmEx credit cards, which Examiner interprets as a clear

“notification” of the relationship between the two companies. Accordingly, the rejection relying on the previously cited prior art is maintained.

Conclusion

14. The new rejection was necessitated by Applicant's amendment. The previous prior art rejections are maintained. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
15. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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16. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Nathan C Uber** whose telephone number is **571.270.3923**. The Examiner can normally be reached on Monday-Friday, 8:30am-4:00pm EST. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Eric Stamber** can be reached at **571.272.6724**.
17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).
18. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

P.O. Box 1450, Alexandria, VA 22313-1450

or faxed to **571-273-8300**.

19. Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window**:

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Alexandria, VA 22314.

/Nathan C Uber/ Examiner, Art Unit 3622
7 December 2009

/Arthur Duran/
Primary Examiner, Art Unit 3622